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Interstate Grocery Distribution, Inc. and Michael Pfeifer. Case 22-CA-21183

February 20, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

Upon a charge and amended charges filed by Michael Pfeifer, the Charging Party, on February 22 and 26, and December 11, 1996, the General Counsel of the National Labor Relations Board issued a complaint on December 13, 1996, against Interstate Grocery Distribution, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On January 16, 1997, the General Counsel filed a Motion for Default Summary Judgment with the Board. On January 17, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 31, 1996, notified the Respondent that unless an answer were received by January 7, 1997, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with offices and places of business in North Bergen, New Jersey, has been engaged in the interstate and intrastate transportation of freight. Annually, the Respondent, in conducting its business operations, derived gross revenues in excess of \$50,000 from the transportation of freight from the State of New Jersey directly to points located outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 807, International Brotherhood of Teamsters, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

From about February 12 through 21, 1996, the Respondent reduced the hours of its employee Michael Pfeifer, and, about February 22, 1996, laid him off. The Respondent engaged in this conduct because Pfeifer joined and assisted the Union and engaged in concerted activities and in order to discourage employees from engaging in these activities. The Respondent also engaged in this conduct because Pfeifer filed a charge under the Act.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act. By the acts and conduct described above, the Respondent has also been discriminating against employees for filing charges or giving testimony under the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(4) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated the Act by reducing Pfeifer's hours and laying him off, we shall order the Respondent to offer him full rein-

statement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, to restore his hours, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the reduction in hours and layoff, and to notify Pfeifer in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Interstate Grocery Distribution, Inc., North Bergen, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Reducing employees' hours or laying them off because they join or assist Local 807, International Brotherhood of Teamsters or engage in concerted activities, or to discourage employees from engaging in these activities, or because employees file charges or give testimony under the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Michael Pfeifer full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and restore his hours.

(b) Make Michael Pfeifer whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful reduction in hours and layoff of Michael Pfeifer and, within 3 days thereafter, notify him in writing that this has been done and that the unlawful reduction in hours and layoff will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in North Bergen, New Jersey, copies of

the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 22, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 20, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT reduce employees' hours or lay them off because they join or assist Local 807, International Brotherhood of Teamsters or engage in concerted activities, or to discourage employees from engaging in

these activities, or because employees file charges or give testimony under the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Michael Pfeifer full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and restore his hours.

WE WILL make Michael Pfeifer whole, with interest, for any loss of earnings and other benefits suffered as

a result of the discrimination against him, less any net interim earnings.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful reduction in hours and layoff of Michael Pfeifer, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful reduction in hours and layoff will not be used against him in any way.

INTERSTATE GROCERY DISTRIBUTION,
INC.